

1 A Certain games are, yes.

2 Q Shown on ABC?

3 A I believe so, yes.

4 Q Shown on CBS?

5 A I haven't done an exhaustive
6 survey, but I'll accept your representation.

7 Q So that's not exclusive content
8 for Comcast, correct?

9 A ACC broadly, no.

10 Q ACC basketball specifically.

11 A That's correct.

12 Q And it's not unique content for
13 Comcast, is it?

14 A Certainly each game is unique.

15 Q There were more than 150 national
16 appearances on TV by the ACC last season,
17 correct?

18 A I'll accept your representation.

19 Q As someone who has worked in this
20 business for a very long time, which are the
21 better games, the ones that are on national
22 networks or the ones that are regionally

1 distributed?

2 A What's your metric for better? I
3 would say a great game is one that's really
4 well played. So you don't know that in
5 advance.

6 Q Is that really your testimony?

7 A Well, like I said, by what metric
8 do you consider better? I mean --

9 Q Mr. Gerbrandt, you've been doing
10 this for awhile, haven't you?

11 A I'm not trying to play a game with
12 you.

13 Q Well --

14 A When we talk about a better game,
15 I said -- I asked you to define what your
16 definition -- you know, what do you mean by a
17 better game.

18 Q As someone who works in Hollywood
19 for a long time, you know what the better game
20 is, don't you?

21 A They tend to be the match-ups that
22 somebody -- well, you might argue -- I could

1 actually see that from a couple different
2 perspectives and usually these things are
3 decided ahead of time, what somebody ahead of
4 time thinks is going to be the -- a more
5 marquee lineup based on how they think the
6 season is going to turn out.

7 Q There's --

8 A It doesn't always -- you know,
9 these things are often decided months in
10 advance. So --

11 Q What would the --

12 A -- but that doesn't mean that's
13 actually how it turns out.

14 Q Let's look at it from the ACC's
15 perspective. Where would they rather have
16 their games shown, on a national network or on
17 a regional network?

18 A Well, my understanding is that
19 they'd actually rather be on whoever's going
20 to pay them the most money. I mean, that's
21 the first gating factor, generally speaking.

22 Q Who's going to pay them more

1 money, the national network with millions of
2 eyeballs, or regional network with less than
3 that?

4 A It depends on the circumstance.
5 It depends on the number of packages, you
6 know. Talking on an individual game basis
7 it's probably the national network, on a one
8 on basis.

9 Q Have you heard of Duke University?

10 A Yes.

11 Q Have you heard of the University
12 of North Carolina?

13 A Yes.

14 Q Do they have prominent basketball
15 programs?

16 A They do.

17 Q Do you know the mascot for the
18 Duke team?

19 A It went in and out of my head,
20 sorry.

21 Q Does Blue Devils ring a bell?

22 A Yeah, I guess so. When you said -

1 - yeah, okay.

2 Q What about North Carolina, do you
3 know what their mascot is?

4 A Is that the Tar Heels?

5 Q Yes, sir.

6 A Yeah.

7 Q Now, they play each other twice a
8 year. Do you know what networks those games
9 appear on?

10 A Not off-hand, no.

11 Q Knowing what you know about the
12 industry, what networks do you believe those
13 would be on, the national ones or the regional
14 ones?

15 A Probably the national ones,
16 although, you know, it doesn't mean a regional
17 network couldn't have the rights to them as
18 well.

19 Q Okay, Mr. Gerbrandt, you're way
20 ahead of me. Isn't it true that on February
21 11th, 2009, Duke versus North Carolina was
22 displayed over the air on ESPN nationally and

1 on Raycom locally?

2 A Was there a question there?

3 Q Yeah, isn't that true?

4 A I don't know that to be a fact,
5 but I'll accept your representation.

6 Q Isn't it also true that on March
7 8th, 2009 Duke versus North Carolina was shown
8 nationally on CBS?

9 A I'll accept your representation.

10 Q Isn't it true that Comcast in not
11 even the exclusive regional channel for ACC
12 basketball?

13 A I don't think so.

14 Q Okay.

15 A Even though it's on the green.

16 Q Isn't it true that Raycom is
17 actually the official network of ACC
18 basketball?

19 A I'll accept -- I believe that's
20 the case, yes.

21 MR. KIRK: Your Honor, when there's
22 not a question pending, we've been going for

1 awhile, it might be an opportune time for a
2 short break.

3 JUDGE SIPPEL: What do you say, Mr.
4 Kim? It's up to you.

5 MR. KIM: Your Honor, if we can
6 keep it short, because I can't finish with the
7 witness in 30 minutes. If we keep it short
8 and with the Court's willingness, I'd be happy
9 to take a break.

10 JUDGE SIPPEL: All right, let's
11 take -- try to do it in 10 minutes. We're I
12 recess.

13 (Whereupon, a short recess was
14 taken.)

15 JUDGE SIPPEL: You are still under
16 oath, sir, and we're going on the record.

17 Mr. Kim?

18 MR. KIM: Thank you, Your Honor.

19 JUDGE SIPPEL: Yes, sir.

20 BY MR. KIM:

21 Q Mr. Gerbrandt, do you know how
22 much -- how Comcast paid for the rights to the

1 ACC program it has?

2 A I do not.

3 Q Do you know how many games are
4 actually shown on Comcast of ACC basketball?

5 A I do not.

6 Q Do you know when they're shown?

7 A I don't have their schedule
8 memorized. No, I do not.

9 Q Have you ever seen that schedule?

10 A I have. I've actually gone on to
11 the CSN website and looked at the programming
12 schedule. But I did not commit it to memory.

13 Q And do you recall what kind of
14 teams played?

15 A It was a wide range of ACC
16 colleges as well as, obviously, whoever the
17 opponents were. It could have been from --
18 I'll just leave it at that. It was -- but I
19 did look at the schedule.

20 Q So let's see if we can analyze ACC
21 basketball as owned by Comcast under the five-
22 point scale that you had. Is that content

1 exclusive to Comcast?

2 A Okay. We're using the five-point
3 -- just to be clear, we're using the five-
4 point scale developed for a network and
5 applying it to a programming package.

6 Q Sir, do you think those points are
7 completely irrelevant?

8 A Again, I think with one you're
9 looking at a network, a carriage decision for
10 a network, and now I'm not entirely sure of
11 the context that -- I mean those five points,
12 with all due respect, were developed to
13 evaluate a network in a carriage context with
14 a particular pricing structure.

15 So all I'm asking you is what is
16 the context? What is the filter that we're
17 looking at here?

18 Q Isn't it true, Mr. Gerbrandt, that
19 Comcast claims that ACC basketball is the
20 reason for the carriage decision of CSNMA in
21 Southwest Virginia? Aren't you aware of that?

22 A I don't know that to be the case

1 but I'll accept your representation.

2 Q Well, if that's the case, then
3 those five points apply on all fours, don't
4 they?

5 A Carriage by whom? Just so I --

6 Q By Comcast.

7 A -- carry -- that is the reason
8 they carry --

9 Q That is the reason why Comcast
10 carries CSNMA in Roanoke-Lynchburg, and Tri-
11 Cities.

12 JUDGE SIPPEL: Wait, wait, let the
13 question be finished.

14 BY MR. KIM:

15 Q Because of the ACC basketball.

16 A That's the only reason.

17 Q That's my understanding of their
18 theory of the case.

19 A Okay.

20 Q So that's very similar, isn't it?
21 It's a carriage decision of a program channel.

22 A Again, you're trying to narrow it

1 down to -- actually I'm trying to understand
2 the question, that's all, really, seriously.

3 Q You don't understand the question?

4 A No, I'm trying to understand --

5 Q You don't understand -- that's
6 right.

7 A -- I'm trying to understand the,
8 you know, application of the criteria and
9 that's all.

10 Q Okay.

11 A And if it's appropriate to apply
12 that criteria to a particular programming
13 package.

14 Q But you agree that the criteria,
15 which are your criteria, apply to carriage
16 decisions of networks, correct?

17 A Of networks, yes.

18 Q Okay. So is Comcast -- I'm sorry,
19 is ACC basketball exclusive to Comcast?

20 A The games -- the ACC games, I
21 believe in many cases, are exclusive to
22 Comcast, so yes, the game itself, ACC

1 generically, no.

2 Q How many games are exclusive to
3 Comcast?

4 A That I don't know.

5 Q Is it unique content?

6 A The games are certainly unique
7 content, yes.

8 Q So your testimony is it is unique
9 content?

10 A The games are unique. The fact
11 that they are college basketball is not.

12 Q Correct. And you applied a
13 different kind of analysis in the NFL case,
14 correct? You said the AK package wasn't that
15 unique because there were lots of football
16 games being played on Sundays that were in the
17 package, correct?

18 A For the NFL games, that is
19 correct.

20 Q Correct. So under that metric,
21 the one you've applied, these are not unique
22 to Comcast, these ACC games, correct?

1 A Okay. I'll agree with that.

2 Q And the next question is are there
3 lots of live games? Are there lots of live
4 ACC games on Comcast SportsNet?

5 A I'd have to go back. We'd have to
6 define what's lots. But there were -- I saw
7 a full schedule of ACC games, yes.

8 Q How many?

9 A I did not count them.

10 Q Can you give me a ballpark?

11 A I did not count them, sir.

12 Q You can't give me a ballpark? If
13 you didn't count them, you can't give me a
14 ballpark?

15 A I wouldn't want to hazard a guess,
16 no, which is what it would be.

17 Q Does Comcast -- strike that --
18 does ACC basketball on Comcast serve an under-
19 served demographic niche?

20 A No.

21 Q And is it available all year or
22 just seasonally?

1 A Basketball games are, by their
2 nature, seasonal. College basketball games.

3 Q It's most from November through
4 March, correct?

5 A That sounds about right. It ends
6 with March Madness.

7 Q Now in the survey that you
8 conducted, you asked the question of what's
9 your favorite conference, correct?

10 A That is correct.

11 Q That's a very general question,
12 isn't it?

13 A Yes.

14 Q That's like asking whether you
15 like American League baseball or National
16 League baseball.

17 A Not necessarily. It was --
18 because there are multiple conferences. It
19 was more trying to understand about their
20 awareness of conferences and whether they
21 followed them that way.

22 Q How many teams are there in the

1 ACC?

2 A Sitting here, I actually don't
3 recall. I looked at the grouping once and I
4 don't recall the specific number.

5 Q Is it fair to say there is more
6 than a couple?

7 A Absolutely.

8 Q And they go from Boston College,
9 correct, in Massachusetts?

10 A Yes, it covers a wide region, yes.

11 Q It goes all the way down to Miami
12 in Florida, correct?

13 A I believe so, yes.

14 Q How many teams are in the American
15 League in baseball?

16 A Well there are 30 leagues and I
17 think it is evenly divided.

18 Q You mean 30 teams, sir?

19 A I'm sorry, 30 teams. I think it's
20 evenly --

21 Q Does 16 sound like a right around
22 ballpark number?

1 A I think.

2 Q Then you asked another question in
3 your survey, correct? You asked what team do
4 you follow the most. And then you asked what
5 team do you follow the second most. And then
6 you asked what team do you follow the third
7 most. Correct?

8 A Correct.

9 Q Now would you agree with me that
10 that is a better question?

11 A Better than what?

12 Q Better than what is you favorite
13 conference.

14 A It's a different question.

15 Q Okay. I'm asking a different
16 question which is is it a better question.
17 Everyone knows it is a different question.

18 A Better than what? I mean -- no,
19 I'm not trying to be cute. I mean -- better
20 for what purpose?

21 Q Mr. Mr. Gerbrandt, you were asked
22 to give an opinion in this case, correct?

1 A I was.

2 Q And the opinion that you were
3 asked to give was related to the demand for
4 MASN's college programming versus Comcast's
5 college programming, correct?

6 A One was a question about a
7 conference. The other one was a question
8 about specific teams. I'm not sure.

9 Q So you don't have an opinion as to
10 which was a better question in offering the
11 opinion that you offer?

12 A Better question to what end?

13 Q To support the opinion that you
14 offer.

15 A One was a good question to ask.
16 What conference do you follow the most? The
17 other one was designed to ask about the team.

18 Q Is it your --

19 A So they're totally different
20 questions. I mean I'm not -- I'm failing to
21 understand what is it about the question that
22 -- better than what?

1 Q Let me ask this question and then
2 let's move on. Is it your testimony that each
3 of those questions facts are equally in your
4 opinion?

5 A No, I think they all need to be
6 taken in aggregate so I wasn't weighting one
7 over the other.

8 Q So it was important to your
9 opinion what conference people liked the most?

10 A I think it was informative.
11 Ultimately we were trying to get at what team
12 or teams did they follow. But you know,
13 there's what we wanted to see, and the reason
14 we asked two different questions, was -- or
15 why we didn't just ask one, as to see if
16 people differentiated between conferences and
17 teams.

18 It was an analyst interest in me
19 that wanted to ask the question in that way
20 and chose to do it.

21 Q Okay. What conclusions did you
22 draw from the fact that some people said I

1 like the ACC most?

2 A The numbers spoke for themselves.

3 Q You can't even tell me what the
4 teams are that are in the ACC, correct?

5 A Actually I went back -- and
6 actually after we did analysis, we identified
7 which teams were in which.

8 Q Mr. Gerbrandt, I just asked you --

9 A But by memory --

10 Q -- excuse me, I just asked you
11 about three minutes ago which teams were in
12 the ACC or how many teams were in the ACC and
13 you couldn't tell me, correct?

14 A That is correct.

15 Q Okay. So what significance is it
16 to you that people prefer the ACC if you can't
17 tell me what teams are in the ACC?

18 A Because I wasn't asked the
19 question. They were asked the question. My
20 opinion as to what teams were in one, yes, I
21 wasn't part of the survey. What was relevant
22 was could they identify -- were they

1 identifying with a conference or did they
2 follow a conference? And then, in addition,
3 do they follow -- what teams do they follow
4 the most.

5 So it was two independent
6 questions, both designed to try to understand
7 fan interest asked two different ways.

8 Q Is it your belief that if they say
9 they like the ACC the most, they want to watch
10 every single team that's in the ACC?

11 A No.

12 Q When you asked them what three
13 teams you follow the most, you came up with a
14 grouping of four teams that stood out from
15 among the rest, correct?

16 A Correct.

17 Q And what were those four teams?

18 A I'd be happy to go back --

19 Q Well, let me see if I can refresh
20 your recollection and move through this.

21 Okay, is it fair to say the four
22 teams were Virginia Tech, the University of

1 Virginia, Duke, and North Carolina.

2 A Sounds right.

3 Q Did you see Mr. Ortman testify?

4 A I did not.

5 Q Are you aware that Mr. Ortman said
6 that he thought the teams that were
7 significant in Southwest Virginia were
8 Virginia Tech and UVA?

9 A I wasn't aware. But I am now.

10 Q Do you know when Virginia Tech
11 went into the ACC?

12 A I do not.

13 Q Do you know whether Virginia Tech
14 was in the ACC prior to 2004?

15 A I remember that there were some
16 restructurings of the various conferences. I
17 don't remember the specific date.

18 Q So let's talk about those four
19 teams, Virginia Tech, the University of
20 Virginia, Duke, and the University of North
21 Carolina. Do you know how many times those
22 four teams were shown on ESPN?

1 A I do not.

2 Q CBS?

3 A I do not.

4 Q Raycom?

5 A I do not.

6 Q CSN Mid-Atlantic?

7 A I didn't do a count of the number
8 of times the teams were shown.

9 MR. KIM: May I approach the
10 witness, Your Honor?

11 JUDGE SIPPEL: You may, sir.

12 BY MR. KIM:

13 Q Let me show you, Mr. Gerbrandt,
14 what has been marked as MASN Exhibit No. 354.
15 I'll ask you, sir, whether you recognize that
16 document.

17 JUDGE SIPPEL: Is this in
18 evidence?

19 MR. KIM: No, it's not, Your
20 Honor.

21 THE WITNESS: I not recognize this
22 document.

1 BY MR. KIM:

2 Q I'll represent to you, Mr.
3 Gerbrandt, that this is from the acc.com which
4 is the whole of the Atlantic Coast Conference.
5 Do you see in the middle of the page where it
6 says 2008/2009 games and appearances
7 breakdown?

8 A Oh, okay. I do.

9 Q Okay. It lists approximately 15
10 to 20 networks, doesn't it?

11 A It does.

12 Q And it starts off with the Raycom,
13 correct?

14 A Correct.

15 Q And then Raycom is showing 35
16 games with 70 appearances, correct?

17 A Yes.

18 Q And do you understand what the
19 difference between the games and appearances
20 is?

21 A Yes, you can appear -- because
22 there's always two opponents, you can appear

1 twice.

2 Q Correct. So Raycom invited 35
3 conference games, correct?

4 A That appears to be the case, yes.

5 Q Okay. And that means you have 70
6 appearances by conference teams because
7 there's 35 games, each time one ACC team
8 playing another ACC team, correct?

9 A I presume that's the way the MASN
10 --

11 Q So there's two ACC appearances per
12 game on recount?

13 A Correct. So it would appear that
14 all -- all 35 games are strictly within the
15 ACC.

16 Q And you previously indicated that
17 you know that Raycom is the official network
18 for the ACC, correct?

19 A I don't recall having said that
20 but I would -- if that is the case, I will --
21 if that's how they are billed then that's how
22 they are billed.

1 Q You didn't know that when you
2 formed your opinion on this case?

3 A I thought we were talking about my
4 testimony earlier today.

5 Q Yes, sir. I'm asking you --

6 A Okay.

7 Q -- did you know what --

8 A They are the official ACC network,
9 yes.

10 Q Then you also see that Fox
11 SportsNet follows with 20 games and 35
12 appearances correct?

13 A Correct.

14 Q Then you have ESPN with 20 games
15 and 29 appearances, correct?

16 A Correct.

17 Q Then you have ESPN2 with 21 games
18 and 27 appearances, correct?

19 A That is correct.

20 Q Then you have regional sports
21 networks, with 10 games and 20 appearances,
22 correct?